

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jeffrey Mulinelli (S)	Team: Squad #7	CCRB Case #: 201707173	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 08/31/2017 10:00 AM	Location of Incident: [REDACTED]	Precinct: 75	18 Mo. SOL 2/28/2019	EO SOL 2/28/2019	
Date/Time CV Reported Thu, 08/31/2017 11:15 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 08/31/2017 11:15 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. LT Vitaliy Zelikov	00000	936353	075 PCT
2. POM Caleb Rauscher	16751	957990	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Caleb Rauscher	Abuse: Police Officer Caleb Rauscher stopped § 87(2)(b) [REDACTED]	[REDACTED]
B.LT Vitaliy Zelikov	Abuse: Lieutenant Vitaliy Zelikov authorized the frisk of § 87(2)(b) [REDACTED]	[REDACTED]
C.POM Caleb Rauscher	Abuse: Police Officer Caleb Rauscher frisked § 87(2)(b) [REDACTED]	[REDACTED]
D.LT Vitaliy Zelikov	Abuse: Lieutenant Vitaliy Zelikov threatened to seize § 87(2)(b) [REDACTED] s property.	[REDACTED]

### Case Summary

§ 87(2)(b) filed this complaint with the CCRB via phone on August 31, 2017. On August 31, 2017, at approximately 10:00 a.m., § 87(2)(b) parked his vehicle in front of § 87(2)(b) in Brooklyn, in order to answer his phone. PO Caleb Rauscher of the 75<sup>th</sup> Precinct approached and stopped § 87(2)(b) either while he was still inside of his vehicle, or had just exited his vehicle (**Allegation A**). Lieutenant Vitaly Zelikov, also of the 75<sup>th</sup> Precinct, approached a few minutes after the stop commenced and allegedly instructed PO Rauscher to “search” § 87(2)(b) (**Allegation B**). Thereafter, PO Rauscher frisked § 87(2)(b) in the area of his pants pockets (**Allegation C**).

§ 87(2)(b) continued speaking with the officers outside of § 87(2)(b). Lieutenant Zelikov allegedly told § 87(2)(b) that his vehicle would be towed if he did not move it quickly (**Allegation D**). § 87(2)(b) left the scene and was not summonsed or arrested.

No video footage was available for this incident.

### Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint because he wanted the officers to be disciplined.
- The Office of the New York Comptroller reported that no Notice of Claim exists for this incident as of November 16, 2017 [01 Board Review].
- According to the Office of Court Administration (OCA) database, § 87(2)(b) has no criminal convictions in New York City in the last ten years [02 Board Review].

### Civilian and Officer CCRB Histories

- § 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)
- In his 12-year tenure, Lieutenant Zelikov has been the subject of 50 allegations stemming from 17 cases. § 87(2)(g), and the following complaints involved substantiated allegations:
  - In CCRB case #201103208, an entry allegation was substantiated against Lieutenant Zelikov and the CCRB recommended charges. The NYPD did not institute disciplinary action.
  - In CCRB case #201503516, a force allegation involving a non-lethal restraining device and a stop allegation were substantiated against Lieutenant Zelikov and the CCRB recommended Command Discipline A. The NYPD did not institute disciplinary action.
  - On two occasions, Lieutenant Zelikov was cited for failing to document an incident in his memo book.
- In his two-year tenure, PO Rauscher has been the subject of three allegations stemming from one prior case. § 87(2)(g)  
§ 87(2)(g)

## **Findings and Recommendations**

### **Allegations not pleaded**

- **Abuse of Authority: Vehicle Stop:** Although § 87(2)(b) alleged that he was approached while seated in his parked vehicle, PO Rauscher stated that he approached § 87(2)(b) after § 87(2)(b) had exited his vehicle. Furthermore, the undisputed justification for the stop of § 87(2)(b) was based on probable cause that § 87(2)(b) had committed a crime, and was not in any way VTL related. Therefore, a stop allegation has been pleaded in lieu of a vehicle stop allegation.
- **Abuse of Authority: Search:** § 87(2)(b) stated that, upon discussing whether he possessed keys to a specific residence, he verbally referenced only having a single key on a key ring, which § 87(2)(b) held in his hand, visible to the officers. Although PO Rauscher stated that he “physically took the object out of” § 87(2)(b)’s hand to determine the identity of the object, § 87(2)(b) did not allege a search of any degree, and therefore a search allegation has not been pleaded.

### **Allegation A – Abuse of Authority: Police Officer Caleb Rauscher stopped** § 87(2)(b)

§ 87(2)(b) stated that he pulled his vehicle into a legal parking space near § 87(2)(b) the home that belongs to his brother, Cephas § 87(2)(b) and parked his vehicle in an effort to answer his phone. PO Rauscher approached § 87(2)(b)’s vehicle on foot and asked him if he knew anyone by the name of § 87(2)(b). PO Rauscher also asked § 87(2)(b) whether he had keys to § 87(2)(b) which § 87(2)(b) denied.

§ 87(2)(b) reported that he started the engine in order to leave after PO Rauscher walked away. PO Rauscher then waved at § 87(2)(b) and told him to turn his vehicle off. PO Rauscher returned to § 87(2)(b)’s vehicle, instructed him to get out, and requested his driver’s license and the vehicle’s documents. Upon receiving these documents, PO Rauscher asked § 87(2)(b) whose vehicle he was driving. PO Rauscher ended his inquiry regarding the vehicle when § 87(2)(b) revealed that it belonged to his wife, but he continued to ask § 87(2)(b) for keys to § 87(2)(b). § 87(2)(b) spoke with officers in the driveway of § 87(2)(b) where he saw his niece, § 87(2)(b). § 87(2)(b) was unable to see § 87(2)(b) prior to this point because she had been standing behind a tree.

§ 87(2)(b) revealed that § 87(2)(b) moved back to England following the incident and he did not have contact information for her [04 Board Review]. Given that § 87(2)(b) is a juvenile, all NYPD documentation pertaining to her identity and the complaint she filed with the NYPD was sealed, and thus unavailable to the investigation. Furthermore, without additional information pertaining to § 87(2)(b) identity, database searches could not be conducted to yield contact information. Therefore, the CCRB was unable to obtain § 87(2)(b) statement regarding the allegations.

PO Rauscher testified that he, Lieutenant Zelikov, and other officers from the 75<sup>th</sup> Precinct whose identities he did not remember, responded to § 87(2)(b) with a juvenile victim of an assault, known to the investigation as § 87(2)(b) in order to retrieve her clothing. Prior to visiting the location, § 87(2)(b) was interviewed at the 75<sup>th</sup> Precinct stationhouse, and a complaint report

(UF61) was prepared. § 87(2)(b) reported that the perpetrator of the assault was her father, identified via the investigation as § 87(2)(b). As the officers and § 87(2)(b) stood in the driveway, a white minivan drove by, and § 87(2)(b) pointed to it and stated, “That’s him! That’s him!” There were no other vehicles on the street at that time, and it was clear to PO Rauscher that § 87(2)(b) was pointing out the white minivan.

PO Rauscher and Lieutenant Zelikov exited the driveway and observed § 87(2)(b) park and exit the minivan. PO Rauscher approached § 87(2)(b) based solely on § 87(2)(b) statement and asked for his license, registration, and proof of insurance. § 87(2)(b) provided the requested documents. PO Rauscher did not ask whose vehicle it was. PO Rauscher asked § 87(2)(b) if he had any arguments or disagreements with a young lady, and if he knew anyone by the name “§ 87(2)(b) § 87(2)(b)” answered negatively. PO Rauscher denied asking § 87(2)(b) for keys to § 87(2)(b) though he revealed that § 87(2)(b) may have been asked by other officers to grant access to the residence because § 87(2)(b) had informed other officers, whose identities PO Rauscher did not know, that § 87(2)(b) had keys to the residence. It was later determined that § 87(2)(b) had misidentified § 87(2)(b) as the alleged perpetrator [05 Board Review].

Consistent with PO Rauscher, Lieutenant Zelikov testified that the officers responded to § 87(2)(b) with § 87(2)(b) and that § 87(2)(b) pointed out § 87(2)(b) as he drove by the location in a minivan. Lieutenant Zelikov stated that he remained in the driveway of § 87(2)(b) as other officers, whose identities he did not recall, approached § 87(2)(b) s vehicle approximately two houses away. According to Lieutenant Zelikov, § 87(2)(b) identification of § 87(2)(b) as the perpetrator of the assault was the only factor leading officers to stop him. Lieutenant Zelikov did not remember whether he was able to see § 87(2)(b) during the stop, and he stated that he did not hear or learn the details of the conversation he had with officers. Lieutenant Zelikov denied that he or any other officer asked § 87(2)(b) for keys or access to the residence. Within five minutes of the stop, § 87(2)(b) informed officers that § 87(2)(b) was her uncle and not the perpetrator. § 87(2)(b) was then told that he was free to go. The assault case was later referred to the 75<sup>th</sup> Precinct Detective Squad [06 Board Review].

The Stop Report prepared by PO Rauscher revealed that § 87(2)(b) was stopped because he was pointed out as the perpetrator by a victim of an assault. Following the execution of the stop, the victim stated that § 87(2)(b) was the perpetrator’s brother [07 Board Review]. Memo book entries made by both PO Rauscher and Lieutenant Zelikov stated that § 87(2)(b) was pointed out by the victim as the perpetrator of the assault [08-09 Board Review].

The officers interviewed § 87(2)(b) and a complaint report was generated for the reported assault, in which she provided details of the crime and identified the perpetrator. Due to § 87(2)(b) juvenile status and unavailability to the CCRB investigation, this report was sealed and inaccessible to the investigation.

Information from an identified informant can establish probable cause to arrest if the informant and information provided meets the two prongs of the *Aguilar-Spinelli rule*: They are proven to have a basis of knowledge for the information provided to the police and that the information is

reliable. People v. Johnson, 66 N.Y.2d 398 (1985) [10 Board Review]. An officer may stop an individual when he reasonably suspects that a person has committed, is committing, or is about to commit a crime. People v. De Bour, 40 N.Y.2D 210 (1976) [11 Board Review].

It is undisputed that § 87(2)(b) was stopped by PO Rauscher during this incident due to his suspected involvement in a domestic assault, as reported by the victim of the assault, § 87(2)(b).

§ 87(2)(b), § 87(2)(g)  
[REDACTED]

§ 87(2)(b), § 87(2)(g)  
[REDACTED]

§ 87(2)(b), § 87(2)(g)  
[REDACTED]

**Allegation B – Abuse of Authority: Lieutenant Vitaliy Zelikov authorized the frisk of § 87(2)(b)**

**Allegation C – Abuse of Authority: Police Officer Caleb Rauscher frisked § 87(2)(b)**  
[REDACTED] testified that Lieutenant Zelikov and PO Rauscher requested that he provide the keys to § 87(2)(b) multiple times. After informing the officers that he did not have the keys, § 87(2)(b) overheard Lieutenant Zelikov instruct PO Rauscher to search him for the keys. PO Rauscher then frisked § 87(2)(b) by squeezing the area outside his front pants pockets and patting around his rear pants pockets. This frisk occurred prior to § 87(2)(b) informing the officers that she had misidentified § 87(2)(b) as the perpetrator. When PO Rauscher informed Lieutenant Zelikov that § 87(2)(b) did not have the keys, Lieutenant Zelikov instructed PO Rauscher to check § 87(2)(b)'s car keys. § 87(2)(b) displayed a single key on a key ring, which belonged to the minivan, for the officers to see [04 Board Review].

PO Rauscher testified that he personally conducted the investigation during the stop of § 87(2)(b) and that Lieutenant Zelikov was 10 to 15 feet away. Approximately one minute into the stop, § 87(2)(b) began reaching into the front pockets of his jeans. PO Rauscher asked him to keep his hands visible and to not reach inside his pockets. § 87(2)(b) then turned around twice to reach into the area of the driver's seat in his vehicle through the driver's door, which remained opened throughout the stop. From his position near the rear of the vehicle, PO Rauscher did not see exactly where § 87(2)(b) reached within the vehicle.

According to PO Rauscher, § 87(2)(b) was simultaneously reaching into his pockets and leaning into his vehicle, so he did not see whether § 87(2)(b) placed any objects into his pockets. PO Rauscher did not recall if he observed any suspicious bulges on § 87(2)(b)'s person, and did not remember having any suspicion that § 87(2)(b) was in possession of a weapon. PO Rauscher observed that § 87(2)(b) had an object clenched in his left hand, though he was unable to see any part of the object. He removed this item from § 87(2)(b)'s hand but handed it back after realizing it was a set of keys. He then frisked § 87(2)(b)'s waistband and pockets for weapons. PO Rauscher stated that he did this because § 87(2)(b) reached into his pockets and vehicle several times, and PO Rauscher did not know what he was grabbing for or what he may have had in either location. The frisk produced negative results. PO Rauscher stated that Lieutenant Zelikov never instructed him to frisk or search § 87(2)(b) nor did he instruct PO Rauscher to look for keys to the house [05 Board Review].

Lieutenant Zelikov testified that he did not remember whether he was able to see § 87(2)(b) at the onset of the stop. § 87(2)(b) appeared cooperative when Lieutenant Zelikov approached him later in the incident. He did not observe § 87(2)(b) reach into his vehicle or pockets, nor did he learn that this was an issue during the stop. Lieutenant Zelikov denied instructing PO Rauscher or any other officer to frisk or search § 87(2)(b). He did not remember whether he observed any officer take such actions, and he did not learn that § 87(2)(b) was frisked or searched during the incident [06 Board Review].

The Stop Report revealed that § 87(2)(b) was frisked because he made furtive movements, including reaching into his pockets and vehicle, and refused to comply with an officer's instructions to stop doing so. Upon viewing the Stop Report, PO Rauscher testified that there were no additional furtive movements made by § 87(2)(b) aside from those described above, and that there were no other factors leading to the frisk [05, 07 Board Review].

§ 87(2)(b), § 87(2)(a) 160.50

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

It is well established that an officer may frisk an individual if he reasonably suspects that the individual possesses a weapon. People v. De Bour, 40 N.Y.2d 210 (1976) [11 Board Review]. During the course of a lawfully initiated police interaction, an officer may frisk an individual to preserve their safety when that individual repeatedly reaches into their pocket and disregards officers' instructions to cease these movements. People v. Robinson, 278 A.D.2d 808 (2000) [13

Board Review]. A search cannot be justified by probable cause that might have led to an arrest, but did not. People v. Reid, 24 N.Y.3d 615 (2014) [14 Board Review].

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation D – Abuse of Authority: Lieutenant Vitaliy Zelikov threatened to seize § 87(2)(b)'s property.**

§ 87(2)(b) testified that Lieutenant Zelikov informed him that his vehicle was illegal and should not be on the road. § 87(2)(b) responded that the vehicle, which had Canadian license plates and belonged to his wife, was in working order and had all of the required paperwork for legal operation. Lieutenant Zelikov maintained that the vehicle was illegal as he examined its documents. Lieutenant Zelikov then looked up to a street sign and stated that § 87(2)(b)'s vehicle was illegally parked. Although the street cleaning rules had not yet gone into effect, § 87(2)(b) informed Lieutenant Zelikov that the vehicle was only there because the officers stopped him. Lieutenant Zelikov told § 87(2)(b) that he would get a tow truck and have the vehicle towed if it was not moved quickly. § 87(2)(b)'s documents were returned to him, and he left the scene by about 10:30 a.m., approximately 30 to 35 minutes after the stop commenced [04 Board Review].

Lieutenant Zelikov stated that there were no issues concerning § 87(2)(b)'s vehicle, its paperwork, functionality, or the location in which it was parked. He denied stating that the vehicle was illegally in the United States or that the vehicle was illegally parked. Lieutenant Zelikov denied telling § 87(2)(b) that he would have the vehicle towed if it was not moved quickly. Moreover, Lieutenant Zelikov stated that he had no intention to remove the vehicle from

the scene, and he denied stating to § 87(2)(b) that he would have the vehicle towed for any reason [06 Board Review].

Consistent with Lieutenant Zelikov, PO Rauscher stated that there were no issues with the location in which § 87(2)(b)'s vehicle was parked. He did not recall any conversation between § 87(2)(b) and Lieutenant Zelikov concerning the vehicle. PO Rauscher denied that Lieutenant Zelikov told § 87(2)(b) that he would have the vehicle towed if he did not move it quickly or for any other reason [07 Board Review].

§ 87(2)(b) was not summonsed during this incident, and there was ultimately no documentation concerning any issues with his vehicle.

§ 87(2)(b), § 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

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Squad: 7

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date